

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

JERRY SEXTON, #05852-084,

Petitioner,

v.

ACTION NO. 2:19cv292

JUSTIN ANDREWS,
Warden,

Respondent.

FINAL ORDER

This matter was initiated by a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 filed in the United States District Court for the District of South Carolina, and transferred to this Court on June 3, 2019. ECF Nos. 1, 15. Petitioner Jerry Sexton, a federal inmate housed at the Petersburg Federal Correctional Complex, was convicted in the United States District Court for the Western District of Virginia and the United States District Court for the District of South Carolina. ECF No. 1, at 2. Mr. Sexton brings this petition under the savings clause of 28 U.S.C. § 2255(e), challenging his criminal convictions in the District of South Carolina on double jeopardy grounds and seeking to have his convictions and sentence vacated. *Id.* at 23, 25.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and

recommendation. The report and recommendation, filed March 3, 2021, recommends that respondent's motion to dismiss the petition be granted, and the petition for a writ of habeas corpus be denied and dismissed without prejudice for lack of jurisdiction. ECF No. 37. On April 14, 2021, after receiving two extensions of the deadline for filing objections, Mr. Sexton filed objections to the report and recommendation. ECF Nos. 39, 41–42.

This Court has reviewed the record and examined Mr. Sexton's objections to the report and recommendation. The Court has made *de novo* findings with respect to the portions objected to and ADOPTS AND APPROVES the findings and recommendations set forth in the report and recommendation. Therefore, Respondent's motion to dismiss the petition, ECF No. 30, is **GRANTED**, and the petition for a writ of habeas corpus, ECF No. 1, is **DENIED** and **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

Mr. Sexton has failed to demonstrate “a substantial showing of the denial of a constitutional right,” and the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 327, 335–36 (2003). Mr. Sexton is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Mr. Sexton intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Final Order. Mr. Sexton may seek such**

a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall please forward a copy of this final order to Mr. Sexton and to counsel of record for respondent.

IT IS SO ORDERED.

July 19, 2021
Norfolk, Virginia

/s/
Arenda L. Wright Allen
United States District Judge